



**Harris County and Harris
County Flood Control District
Drug & Alcohol Policy**

10/01/10

HARRIS COUNTY AND HARRIS COUNTY FLOOD CONTROL DISTRICT DRUG AND ALCOHOL SCREENING POLICY

I. PURPOSE

The purpose of this policy is to ensure that applicants who have been offered employment with Harris County and Harris County employees are not abusing illegal drugs, prescription drugs, alcohol, or any other substances that may impair their ability to perform the functions of their jobs safely and effectively, or that may increase the potential for accidents, or substandard performance, or that may tend to undermine the efficiency of the County's operations. This policy will foster and maintain a program to achieve a drug-free workplace. As used herein, the terms "County" or "Harris County" include the Harris County Flood Control District.

Direct any questions regarding this policy to the Harris County Attorney's Office or the Office of Human Resources & Risk Management.

II. SCOPE

- A. This policy applies to every applicant for employment with and every employee who works in a department under the direction of the Commissioners Court, as well as the Harris County Flood Control District, and every applicant for employment with and every employee who works under an elected or appointed official who chooses to adopt this policy. As used herein, the terms "applicant" and "employee" mean only those applicants and employees covered by this policy and **excludes applicants and employees who are covered by the Drug and Alcohol Screening Policy for Commercial Drivers.**
- B. **All applicants.** Upon receiving a conditional job offer, every applicant, including an applicant for a part-time or seasonal position, is tested for the presence of the drug groups set forth in this policy. Generally, applicants are not accepted for employment until the negative test results are provided to the County. However, in certain very limited situations and only with the prior approval of the Director of Human Resources & Risk Management or the Elected Official who has adopted this policy, a department may schedule someone to work when that person has received a conditional job offer and submitted a specimen for testing under this policy. But if the test results are positive, then the individual is terminated immediately.
- C. **Safety-sensitive.** Employees who work in safety-sensitive positions are subject to random testing for drugs and alcohol. Additionally, before assuming a safety-sensitive position, current employees must pass a drug test as required for all applicants.

- D. **Reasonable-suspicion.** Every employee is subject to testing if there is reasonable suspicion to believe that the employee has violated the prohibitions of this policy while in the course and scope of employment.
- E. Each department under the direction of the Commissioners Court and every elected or appointed official who chooses to adopt this policy must establish internal procedures for meeting the requirements of this policy.
- F. **ALL APPLICANTS AND EMPLOYEES MUST RECEIVE A COPY OF THIS POLICY AND MUST ACKNOWLEDGE IN WRITING THAT THEY HAVE RECEIVED AND READ THE POLICY.**

III. DEFINITIONS

- A. **"Alcohol"** – The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- B. **"Alcohol Concentration"** - The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an EBT.
- C. **"Applicant"** - Includes both an applicant for employment and an employee desiring to transfer from a nonsafety-sensitive position to a safety-sensitive position.
- D. **"Certified Laboratory" or "Laboratory"** – Any U.S. laboratory certified by the Department of Health and Human Services under the National Laboratory Certification Program to perform DOT drug and alcohol screening.
- E. **"Conviction for a criminal drug statute violation"** - A finding of guilt or imposition of sentence, including deferred adjudication or probation, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
- F. **"DOT"** - The United States Department of Transportation.
- G. **"EBT"** – A device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the .02 and .04 alcohol concentrations. This testing device is selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices published in the Federal Register from time to time by the National Highway Traffic Safety Administration.
- H. **"Illegal Drug"** - Any drug that cannot be obtained legally or any prescription drug that has not been legally obtained or that has been legally obtained and is not being used in accordance with the prescribed dosage. Examples of illegal drugs include, but are not limited to, cocaine, heroin, phencyclidine (PCP), inhalants, and cannabis substances such as marijuana and hashish.

- I. **"Legal Drug"** - Any prescribed drug or over-the-counter drug the individual has legally obtained and is using in accordance with the prescribed or recommended dosage.
- J. **"Medical Review Officer"** - A licensed physician retained by Harris County to receive Laboratory results generated by this policy who is responsible for interpreting and evaluating a confirmed positive drug test result. The Medical Review Officer may be an employee of the Laboratory conducting the testing if the Laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the Medical Review Officer has no responsibility for, and is not supervised by or the supervisor of, anyone who has responsibility for the testing or quality control operations of the Laboratory.
- K. **"Possession"** - To have on one's person, in one's personal effects, in one's vehicle, or under one's control.
- L. **"Reasonable suspicion"** - An articulable belief, based upon specific facts or incidents and reasonable conclusions drawn from those facts or incidents. Facts or incidents which constitute reasonable suspicion may include, but are not limited to, the following:
- (i) observation of alcohol or illegal drug use;
 - (ii) observations of alcohol, illegal drugs, or drug paraphernalia on the person, or within an area under the person's immediate control;
 - (iii) a pattern of abnormal or erratic behavior, including the observation of physical symptoms of alcohol or illegal drug use; or
 - (iv) Employee involvement in **either**
 - a work-related accident **or**
 - a vehicular collision while operating a vehicle as defined in this policy **and**
 - where there is also reason to believe that the employee may have been at fault in causing the accident or vehicular collision (i.e., if the employee was issued a moving citation in connection with a collision).
- M. **"Safety-Sensitive Position"** - A position involving job duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity, or composure may result in mistakes that could present a real or imminent threat to the personal health and safety of the employee, coworkers, or the public. Employees who operate a vehicle as part of their regularly assigned, routinely performed job duties are in safety-sensitive positions. Departments designate which of their positions are safety-sensitive and provide a list of such positions to the Director of the Office of

Human Resources & Risk Management or his designee who maintains a master list of safety-sensitive positions subject to random testing. Employees are notified that they hold safety-sensitive positions and are subject to random drug and alcohol testing.

- N. **"Vehicle"** - Any motorized equipment, whether County owned or not, used on public or nonpublic roadways or rights-of-way in the course and scope of employment. This specifically includes, but is not limited to, tractors, lift trucks, and automobiles.
- O. **"Training"** - The Office of Human Resources & Risk Management conducts training and education programs for employees and supervisors, including a drug-free awareness program designed to inform employees about the dangers of drug and alcohol use/abuse and the County's policies concerning substance abuse.

IV. **PROHIBITIONS**

- A. Employees are prohibited from reporting for work or remaining on duty with an alcohol concentration of .02 or higher or when using illegal drugs. Employees in safety-sensitive positions are prohibited from performing safety-sensitive functions within four hours after drinking alcoholic beverages regardless of the alcohol concentration in their breath.
- B. The use, possession, distribution, or sale of alcohol or illegal drugs by any employee during working hours, while on County property, or while operating or riding upon vehicles while in the course and scope of employment is prohibited. Employees must notify their supervisor or designated Department representative of a conviction for a criminal drug statute violation that occurred in the workplace no later than five days after such conviction. The supervisor or designated Department representative must then report the conviction to the Director of the Office of Human Resources & Risk Management.
- C. It is not a violation of this policy for any employee with a current, valid prescription for a drug to use, possess, or be under the influence of such drug in the manner and for the purposes prescribed, if such use **does not** affect the employee's performance or create a risk to the safety of the employee or to others. Employees are responsible for learning of the possible effects of prescription and non-prescription drugs they use while working and must notify their supervisor or designated Department representative of such use and of the possible side effects of such drugs or medications. The County may, at its discretion, require employees in safety-sensitive positions to refrain from working while taking *any* drug or medication, or require such employees to obtain written authorization from their physician regarding their ability to perform their essential job duties safely while taking the medication.

V. CONSENT TO DRUG AND ALCOHOL SCREENING

Anyone tested pursuant to this policy must sign a consent form authorizing the drug and/or alcohol screening and permitting limited disclosure of the results. The results may be disclosed to the Director of the Office of Human Resources & Risk Management or to other persons he designates to receive such confidential information. The consent form contains the following information:

- (1) Acknowledgment that the applicant and/or employee has been notified of the drug and alcohol screening policy;
- (2) The consequences of a refusal to have the drug and/or alcohol screening;
- (3) The procedure for confirming a positive test result; and
- (4) The consequences of a confirmed positive test result from the drug and/or alcohol screening.

VI. TESTING PROCEDURES FOR THE DRUG SCREENING

- A. Urine samples are tested at a Certified Laboratory to detect the prohibited drug levels set out in Section X of this policy. All drug tests are conducted at the County's expense with the exception of the split specimen tests discussed in Section XIV. The Laboratory conducting the test maintains written procedures in accordance with DOT requirements to ensure privacy, prevention of tampering, and chain of custody methods, including correct identification, labeling, and storage of all test samples. A copy of these procedures is available at the Laboratory to each job applicant and employee upon request. The Laboratory certifies that methods of analysis are state of the art, including the use of immunoassay techniques for initial test results and gas chromatography/mass spectrometry for confirmatory test results.
- B. A Medical Review Officer receives, reviews, and interprets drug test results; confers directly with the applicant or employee to determine alternate medical explanations for positive test results; and notifies applicants, employees, and the appropriate Elected Official, Department Head, or designee of confirmed, positive drug test results.

VII. TESTING PROCEDURES FOR THE ALCOHOL SCREENING

- A. Alcohol breath testing is conducted at a Certified Laboratory. All alcohol breath tests are conducted at County expense. A copy of these procedures is available at the Laboratory to each employee upon request.

- B. An EBT is used to detect and measure the presence of alcohol. If the result of the initial screening EBT test is an alcohol-concentration of 0.02 or greater, a confirmation EBT test is performed after the expiration of a period of not less than fifteen minutes to confirm that the test has properly measured the alcohol concentration. The confirmation test performed on an EBT meets the requirements set out in 49 C.F.R. Part 40.
- C. All alcohol tests are conducted by breath alcohol technicians trained in using EBTs and alcohol testing procedures as evidenced by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks, the fundamentals of breath analysis for alcohol content, procedures for obtaining a breath sample, and interpreting and recording EBT results.
- D. The appropriate Elected Official, Department Head, or designee receives the EBT results and notifies the employee or applicant of the results.

VIII. REASONABLE SUSPICION TESTING

- A. A drug and alcohol test must be conducted within two hours of any event defined in Section III. L. (iv). If the tests are not administered within two hours, the supervisor or designated Department representative must document why the tests were not administered timely and place a copy of the explanation in the employee's separate medical file.
- B. Employees are responsible for notifying their supervisor or designated Department representative as soon as medically practical after every event defined in Section III. L. (iv). Failure to notify the supervisor or designated Department representative may result in disciplinary action, up to and including termination.
- C. Employees are subject to testing if, while in the course and scope of employment, there is reasonable suspicion to believe that they are in violation of this policy. Supervisors who suspect that an employee is violating the policy must immediately provide the appropriate Elected Official, Department Head, or their designee with a written request for testing the employee. The written request must set out the specific facts, symptoms, or observations that form the basis of the determination that reasonable suspicion exists to test the employee. Upon receipt of the request, the Elected Official, Department Head, or their designee makes a final decision whether reasonable suspicion exists. If the test is authorized the supervisor or designated Department representative contacts the employee and schedules an immediate drug and/or alcohol test. The drug and/or alcohol test is conducted in accordance with the procedures established by this policy.

IX. RANDOM TESTING

- A. The random testing program is conducted and administered through personnel designated by the Elected Official, Department Head or their designee. The Office of Human Resources & Risk Management maintains a current list of safety-sensitive positions subject to random testing under this policy.
- B. The testing provider randomly selects a number of employees from the test group for testing. Once the employees to be tested are selected, the Elected Official, Department Head or their designee immediately notifies the employees that they have been randomly selected. Testing is conducted immediately upon receipt of notice. After testing has been completed, the employees tested are returned to the selection pool so that all employees in a test group are always eligible to be chosen. (Under this arrangement, it is possible that an employee may be tested two or more times within the same year. Conversely, it is possible that an employee may not be tested at all within a year.) An employee who is absent from work on either paid or unpaid leave when selected for testing is excused from the test.

XII. PROHIBITED DRUG LEVELS

The drug testing under this policy will adhere to 49 C.F.R. Part 40, as amended. The initial drug screening is an enzyme immunoassay techniques (EMIT) test to detect the following prohibited drug group levels:

<u>Substance</u>	<u>EMIT Cut-Off Level</u>
1. Marijuana metabolites (THC)	50 ng/mL
2. Cocaine metabolites	150 ng/mL
3. Phencyclidine (PCP)	25 ng/mL
4. Amphetamines (Amphetamine/Methamphetamine)	500 ng/mL
Methylenedioxymethamphetamine (MDMA)	500 ng/mL
5. Opiate metabolites (Codeine/Morphine)	2000 ng/mL
6-Acetylmorphine (Heroin)	10 ng/mL

All specimens identified as positive on the initial test are confirmed using gas chromatography/mass spectrometry (GC/MS) techniques. The confirmation test conducted is given to detect the following prohibited drug group levels:

<u>Substance</u>	<u>GC/MS Cut-Off Level</u>
1. Marijuana metabolites (THC)	15 ng/mL

2.	Cocaine metabolites	100 ng/mL
3.	Phencyclidine (PCP)	25 ng/mL
4.	Amphetamines	
	Amphetamine	250 ng/mL
	Methamphetamine	250 ng/mL
	(specimen must also contain amphetamine at a concentration of ≥ 100 ng/mL)	
	Methylenedioxymethamphetamine (MDMA)	250 ng/mL
	Methylenedioxyamphetamine (MDA)	250 ng/mL
	Methylenedioxyethylamphetamine (MDEA)	250 ng/mL
5.	Opiate metabolites	
	Codeine	2000 ng/mL
	Morphine	2000 ng/mL
	6-Acetylmorphine (Heroin)	10 ng/mL

Both tests are performed before any notice of a positive drug test result is provided to the County.

XI. STATUS OF EMPLOYEES PENDING RECEIPT OF DRUG AND/OR ALCOHOL TEST

Upon completion of a drug and/or alcohol test based upon reasonable suspicion, an employee cannot return to work until the results of the test are given to the designated Department representative. The employee is placed on unpaid leave pending receipt of the test results unless the employee desires to take vacation leave or compensatory leave as authorized under the Personnel Regulations. The Department will help the employee arrange transportation to the testing facility and home. Employees tested based upon reasonable suspicion must not drive any vehicle while in the course and scope of employment until the results from the drug and/or alcohol tests are received. Employees are responsible for verifying with the designated Department representative when they may return to regular working duties.

XII. CONSEQUENCES OF A POSITIVE DRUG TEST FOR APPLICANTS

- A. An applicant who refuses to take a drug test under this policy is ineligible for hire. Conduct considered as *refusing* a test include:
- Failure to appear for any test.
 - Failure to remain at the testing site until the testing process is completed.
 - Failure to cooperate with any part of the testing process.
 - Failure to take a second test when directed to do so.

- Failure to undergo a medical evaluation as part of a “shy bladder” or “shy lung” procedures.
 - Providing an adulterated or substituted urine specimen.
- B. An applicant who has a confirmed positive test result for illegal drugs is not qualified for employment. Six months must elapse from the date of a confirmed positive test result before an applicant may reapply for employment.

XIII. CONSEQUENCES OF A POSITIVE DRUG AND/OR ALCOHOL TEST FOR EMPLOYEES

- A. Employees who refuse to take a drug and/or alcohol test under this policy are terminated. Conduct considered as *refusing* a test include:
- Failure to appear for any test.
 - Failure to remain at the testing site until the testing process is completed.
 - Failure to cooperate with any part of the testing process.
 - Failure to take a second test when directed to do so.
 - Failure to undergo a medical evaluation as part of a “shy bladder” or “shy lung” procedures.
 - Providing an adulterated or substituted urine specimen.
- B. Employees who have a confirmed positive test result for illegal drugs or a confirmed alcohol concentration of .02 or greater are subject to disciplinary action, up to and including termination. Department Heads determine the appropriate disciplinary action. Department heads that choose not to terminate an employee under this subsection must give the employee a mandatory referral to the Employee Assistance Program.
- C. An employee who is terminated for refusing to take a drug and/or alcohol test or who is terminated for having a positive drug and/or alcohol test may be eligible for rehire provided the employee is willing to take another drug and/or alcohol test. However, six months must elapse before such individuals may reapply for employment. Any decisions to rehire will include, but will not be limited to, consideration of the former employee’s past work record and current qualifications, results of the drug test at the time of application for reemployment, as well as the County’s current needs and requirements.

XIV. SPLIT SPECIMEN TESTING OF URINE SPECIMENS

- A. An individual who tests positive for illegal drugs or who provides an adulterated or substituted specimen may have an independent test performed, at his or her expense, of a portion of the specimen that yielded the positive, adulterated, or substituted result. The individual must request an independent test within 72 hours of receiving notification of a confirmed positive test result or of an adulterated or substituted

specimen. The independent test must be conducted by a Certified Laboratory. Upon written authorization from the individual, a portion of the specimen is delivered by the testing Laboratory to the Laboratory selected by the individual. If this second test result is negative for illegal drugs and neither adulterated nor substituted, records of the original test are treated as records of a negative test result. An individual who is reinstated based on the results of an independent test may be reimbursed for the actual cost of the second test, but in no event will reimbursement exceed the amount the County paid for the initial test.

- B. An individual's inability to pay for a split specimen test will not preclude the testing.

XV. CONFIDENTIALITY

- A. All information relating to the drug and/or alcohol screening is confidential unless disclosure is otherwise required by law, court order, or the applicant's or employee's consent. Disclosure of the results of the drug and/or alcohol screening to any unauthorized county employee, agent, or person without permission of the person tested is strictly prohibited.
- B. All records of unconfirmed and negative test results are maintained in accordance with all applicable laws and regulations. Records of test results and medical information, if any, are maintained in secure files separate from the applicant or employee's personnel file.

XVI. EFFECTIVE DATE

This policy and procedures contained herein shall become effective on **October 1, 2010**.

**HARRIS COUNTY AND HARRIS COUNTY FLOOD CONTROL DISTRICT
DRUG AND ALCOHOL SCREENING POLICY**

CERTIFICATE OF RECEIPT

I have received a copy of the Harris County and Harris County Flood Control District Drug and Alcohol Screening Policy and understand that this policy applies to me.

(Departments must maintain a copy in the employee's file)

Employee's Signature

Date

Print Name of Applicant or Employee

Supervisor/Witness

**HARRIS COUNTY AND HARRIS COUNTY FLOOD DISTRICT
ACKNOWLEDGMENT AND CONSENT FORM
FOR SUBSTANCE ABUSE TESTING**

I hereby acknowledge that I have received and read the HARRIS COUNTY AND HARRIS.COUNTY FLOOD CONTROL DISTRICT DRUG AND ALCOHOL SCREENING POLICY. I understand that Harris County or the Harris County Flood Control District reserves the right to conduct tests for the presence of alcohol and illegal drugs, and that a positive test result may subject me to disciplinary action (including termination) or ineligibility for employment with Harris County. I understand that if I refuse to cooperate with testing or refuse to provide a urine or breath test specimen, I will be terminated from employment or ineligible for employment.

I further authorize the testing laboratory to disclose the results of any such tests to the Director of the Office of Human Resources & Risk Management or to such other persons designated by the Director of the Office of Human Resources & Risk Management to receive confidential information. I understand that my test results are protected as confidential under the Public Information Act, Chapter 552 TEX. GOV'T CODE ANN., as amended.

In the event my drug test result is positive, I understand that I may request to have an independent drug test performed, at my own expense, of my urine specimen that yielded the positive test result. This test must be done at a Certified Laboratory.

I acknowledge that this policy is a term and condition of continued employment. I understand that if I do not wish to be subject to the testing policy, I may resign my position. Additionally, nothing about this policy changes my status as an at-will employee. The County or District may fire me at any time for any reason.

(Departments must maintain a copy in the employee's personnel file)

Signature of Applicant or Employee

Date

Print Name of Applicant or Employee

Signature of Supervisor/Witness